

MINUTES

Executive Board



Representative G. Mark Mickelson, Chair
Senator Brock L. Greenfield, Vice Chair
Representative Spencer Hawley, Ranking Minority Member

**Fifth Meeting, 2017 Interim
Monday, August 28, 2017**

**Room 413 – State Capitol
Pierre, South Dakota**

The fifth meeting of the Executive Board for the 2017 Interim was called to order by Representative G. Mark Mickelson at 9:30 a.m. in room 413 of the State Capitol. A quorum was determined with the following members answering roll call: Representatives Spencer Gosch, Steven Haugaard, Lee Qualm, Tim Reed, Mike Stevens, and Craig Tieszen; Senators Jim Bolin, R. Blake Curd (via phone), Kris Langer (via phone), Jeff Partridge, Jim Stalzer, and Billie H. Sutton (via phone); Representative Spencer Hawley, Ranking Minority Member; Senator Brock L. Greenfield, Vice Chair; and Representative G. Mark Mickelson, Chair.

Staff members present include Jason Hancock, Director; Sue Cichos, Deputy Director; Doug Decker, Code Counsel; Annie Mehlhaff, Chief Fiscal Analyst; David Ortbahn, Chief Analyst for Research; Scott Darnall, Information Technology Manager; Jeff Mehlhaff, Fiscal Analyst; and Cindy Tryon, Senior Secretary.

NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council office. This meeting was web cast live. The archived web cast is available at the LRC web site at <http://sdlegislature.gov>.

Approval of Minutes

A MOTION WAS MADE BY REPRESENTATIVE STEVENS, SECONDED BY REPRESENTATIVE QUALM, TO APPROVE THE MINUTES OF THE TUESDAY, JUNE 6, 2017, EXECUTIVE BOARD MEETING. Motion prevailed on a voice vote.

Investment Council Subcommittee Report

Representative Mark Mickelson, Chair of the Investment Council Subcommittee, said Ms. Laura McNally resigned her position on the Investment Council because of a change in her employment. The subcommittee interviewed two excellent candidates for replacing Ms. McNally on the Council, and recommends the Executive Board appoint Mr. Loren Koepsell to fill the unexpired term of the vacancy on the Investment Council.

A MOTION WAS MADE BY SENATOR GREENFIELD, SECONDED BY REPRESENTATIVE GOSCH, TO APPOINT MR. LOREN KOESELL TO FILL THE REMAINDER OF MS. MCNALLY'S TERM ON THE INVESTMENT COUNCIL. The motion prevailed on a roll call vote with 14 voting AYE, 1 EXCUSED. Those voting AYE: Gosch, Haugaard, Qualm, Reed, Stevens, Tieszen, Bolin, Curd, Partridge, Stalzer, Sutton, Hawley, Greenfield, and Mickelson. EXCUSED: Langer.

Mr. Steve Kirby, Chair, and Mr. Matt Clark, State Investment Officer, South Dakota Investment Council, presented the SD Investment Council's Investment Performance and FY19 Budget Request ([Document #1](#)).

Mr. Kirby pointed out that the Investment Council outperformed the benchmarks this year and has done that over the past 10 years, and that success alone has netted over \$1 billion. Mr. Clark added that if the Investment Council overperforms just a half percent a year over the next 20 years it will add up to almost \$4 billion.

Mr. Kirby said the Investment Office team does great, meticulous research and that makes for the impressive results. Representative Mickelson said the South Dakota Investment Office outperforms the world by 1-1/4% partly because the fee structure is lower.

Mr. Clark presented the Investment Council's FY19 budget request for Board consideration.

A MOTION WAS MADE BY SENATOR PARTRIDGE, SECONDED BY SENATOR BOLIN, TO APPROVE THE FY19 SOUTH DAKOTA INVESTMENT COUNCIL BUDGET AS PRESENTED. The motion prevailed on a roll call vote with 14 voting AYE and 1 EXCUSED. Those voting AYE: Gosch, Haugaard, Qualm, Reed, Stevens, Tieszen, Bolin, Curd, Partridge, Stalzer, Sutton, Hawley, Greenfield, and Mickelson. EXCUSED: Langer.

Mr. Clark then presented the information on the Trust Funds (pages 17-18 of Document #1). The Trust Fund accounts include Health Care Trust, Education Enhancement Trust, Dakota Cement Trust, and School & Public Lands.

Mr. Jeff Mehlhaff, Fiscal Analyst, Legislative Research Council, was asked how the trust funds are distributed. Mr. Mehlhaff explained the funds go into the general fund and are then appropriated to the proper agencies. Monthly trust fund reports are posted on the LRC website and can be found [here](#).

Uniform Law Commission Subcommittee Report

A video, *An Introduction to the Uniform Law Commission*, was played for the Board. The short video can be found on the Uniform Law's website at uniformlaws.org.

Mr. Michael DeMersseman, Lifetime Member, Uniform Law Commission, talked to the Board about the policies and procedures of the Uniform Law Commission. Mr. DeMersseman said 128 acts that are effective in South Dakota came from the Uniform Law Commission meetings.

Representative Mickelson said the Legislature needs to be made more familiar with the Uniform Law Commission and the bills brought forward through the Commission's work.

Representative Steven Haugaard suggested bringing one of the non-Legislator Uniform Law Commissioners to meet with the Legislators to present information regarding legislation resulting from the Uniform Law Commission meetings. Representative Mickelson appointed Representative Haugaard to work with Director Hancock to arrange this type of informational meeting early in the 2018 Legislative Session.

Mr. DeMersseman became a lifetime member this year, leaving a vacancy on the Uniform Law Commission that needs to be filled by the Executive Board. The remainder of the vacant term is for one year.

Representative Mike Stevens reported on the Uniform Law Commission Subcommittee that interviewed three highly qualified applicants. Representative Stevens said appointing an attorney who is a legislator may help address the disconnect issue that the Board has discussed. Senator Rusch is the only applicant who also serves in the Legislature.

A MOTION WAS MADE BY SENATOR BOLIN, SECONDED BY SENATOR STALZER, TO APPOINT SENATOR ARTHUR RUSCH TO THE UNIFORM LAW COMMISSION. The motion prevailed on a roll call vote with 14 voting AYE and 1 EXCUSED. Those voting AYE: Gosch, Haugaard, Qualm, Reed, Stevens, Tieszen, Bolin, Curd, Partridge, Stalzer, Sutton, Hawley, Greenfield, and Mickelson. EXCUSED: Langer.

Technology Subcommittee Report

Representative Hawley, Chair, Technology Subcommittee, and **Mr. Scott Darnall, IT Manager**, presented the subcommittee report. The LRC website is being redesigned and the legislator information that is included on the website was discussed, with the recommendation that the legislator information include a phone number and the legislators' state email addresses; no personal social media links will be included at this time. The new website should be ready by the end of November or first part of December.

Mr. Darnall said an outside security company did an audit of the network last year and the few issues they found have been addressed. Mr. Darnall said the technology updates to the committee rooms on fourth floor will be underway the month of September and should be completed by the first of October.

Internet Sales Tax Collection Update

Mr. Andy Gerlach, Secretary, Department of Revenue, gave a presentation on E-Commerce [\(Document #2\)](#). The Department of Revenue estimates the state loses \$50 million a year to e-commerce.

In 2016, SB 106 was signed into law requiring remote sellers to remit SD sales tax when their gross revenue exceeds \$100,000 or their total number of SD transactions is 200 or more. In April of 2016, Wayfair, Inc., Overstock.com, Inc., and Newegg, Inc. took the state to court over this new law. The case will be heard in the SD Supreme Court on August 29 and, if the state loses, the state will appeal to the US Supreme Court. Since SB 106 was passed, 153 remote sellers have applied for sales tax licenses and there are currently 105 remote sellers with SD sales tax licenses. Tax reported by remote sellers since the passage of SB 106 is \$1,567,044.

Through the Streamlined Sales Tax project, 36 states have passed remote seller Nexus legislation. The states have done due diligence to simplify the sales tax filing process for remote companies and now Congress needs to take action. Secretary Gerlach thanked Representative Reed for his participation in the Streamlined Sales Tax project.

Representative Mickelson requested Attorney General Jackley be invited to the November Executive Board meeting to further discuss the remote seller litigation.

Representative Haugaard suggested the Department of Revenue provide an electronic link to the use tax form so people can more easily pay the use tax voluntarily.

Sales Tax Revenue Update

Mr. Jim Terwilliger, Deputy Commissioner and State Economist, Bureau of Finance and Management, provided an update for state revenues [\(Document #3\)](#). These financial documents are updated monthly and can be found on [BFM's website](#).

Representative Craig Tieszen asked about the unclaimed property receipts. Mr. Terwilliger explained that the amount paid out for unclaimed property claims is truly unpredictable and the amount of the claims paid will most likely continue to increase.

Sales Tax SIC Codes & Sales Tax Collection Allowances

Mr. Jeff Mehlhaff, Fiscal Analyst, gave a report on sales tax collections based on business types [\(Document #4\)](#). This handout illustrates by business type what is driving the sales tax changes.

Mr. Mehlhaff also distributed a report showing the comparison of 2017 and 2016 tax collections based on industry divisions and major groups [\(Document #5\)](#).

Issue Memo

Mr. Wenzel Cummings, Legislative Attorney, presented the *Initiatives and Referenda Issue Memorandum* [\(Document #6\)](#). South Dakota was the first state to adopt the voter-initiated measures and referenda, adding the process to its constitution in 1898. The Issue Memo gives the history of the initiative and referenda process, explains the process, and lists all changes to the process since it was first adopted. Mr. Cummings pointed out that legislation does not necessarily need an emergency clause in order to be exempt from the referendum process, but must be related to one of several types of issues called out in the state constitution.

Mr. Cummings is the staff support for the Initiative and Referendum Task Force which was created by 2017 legislation and tasked with conducting a comprehensive review of the ballot measure process in South Dakota during the 2017 interim. The task force has drafted several pieces of legislation for the legislature to consider during the 2018 Legislative Session. A summary of those bill drafts can be found [here](#).

Management Reports

Ms. Sue Cichos, Deputy Director, introduced Ms. Kelly Thompson who is the new LRC Senior Secretary and supervisor of the Session Secretaries. Ms. Cichos announced that Ms. Shirley Ellwein has accepted the position of Page Advisor, replacing Ms. Phyllis Perkovich who retired after the 2017 session. Packets with the page information will be mailed to all legislators and 191 schools on September 1, and the information has been available on the LRC website.

Ms. Cichos explained that while researching the digitization of LRC reference materials, it was discovered that the State Archives is digitizing many of the same materials. Rather than duplicate the process, the LRC website will link to the State Archives website.

Mr. Doug Decker, Code Counsel, said the West Publishing contract for printing the code has been renewed but the need to produce a CD-ROM of the code was removed from the contract. All the information that was on the CD-ROM can now be found on-line. The Code Commission will be deciding which volumes of the code will be reprinted and issued in October.

Ms. Annie Mehlhaff, Chief Fiscal Analyst, introduced Ms. Ariel Hammerquist who is the new Fiscal Analyst and replaces Stephanie Gruba who left to go to law school. Ms. Mehlhaff said Fiscal has been busy preparing for the Joint Committee on Appropriation's tours of state facilities. Tours of facilities in eastern and central South Dakota have been completed and the western tours will be conducted in October.

Mr. David Ortbahn, Chief Research Analyst, said the Research staff has reviewed twenty proposed ballot measures, of which eight required fiscal impact statements. The staff has also been busy with the interim study committees, reviewing proposed rules, and researching and writing issue memos.

Mr. Ortbahn said Research is transitioning into session preparation. The numbers are up for bill requests. The bill drafting seminar for state agencies will be held on August 31. LRC receives over a hundred bill requests from state agencies and it is helpful if those bill requests come in proper style and form.

Ms. Clare Charlson, Principal Research Analyst, gave an update on the Workforce Housing Study Committee. The committee has held two meetings for information gathering. Representative Lust chairs the committee and has compiled a list of ideas that may help alleviate the problems with workforce housing and the full committee is now reviewing that list for comments and additions. Another meeting will be held in October at which time the committee will discuss the list and make final recommendations.

Mr. Fred Baatz, Principal Research Analyst, gave an update on the Government Accountability Task Force. The task force met June 19 and meets again August 29 and October 16. An NCSL representative will talk to the task force about how other states are approaching this issue and current trends regarding government accountability. Senator Youngberg serves as the chair of the task force.

Mr. Baatz gave an update on the LRC Intern Program. Applications and informational materials are being mailed to the schools. Over the years, USD, SDSU, and NSU have been the major contributors of students for the intern program. Ms. Jessica LaMie and Mr. Lucas Martin are also involved in the intern program and they will join Mr. Baatz in visiting the schools for recruitment purposes and in conducting the intern interviews. The intern application deadline is October 12, and recommendations should be made to the House and Senate leadership by

November 1. The plan is to let the selected interns know by November 6 to give them time to prepare for their internships in Pierre.

Mr. Jason Hancock, Director, presented information on the remodel plans for the third-floor bathrooms located just behind the House and Senate Chambers. Mr. Hancock explained the remodel will include replacing the fixtures in all four bathrooms and will bring the two bathrooms behind the Senate up to ADA standards. The work on the bathrooms is expected to be completed mid-December.

The Executive Board retreat will be held October 1-3 at Cedar Shore in Oacoma, and will include discussions on several topics including Joint Legislative rules, legislative salaries, performance indicators, board papers and any other issues the board members request.

Mr. Hancock said he and the Lieutenant Governor will be holding a legislative rules seminar for the LRC staff on October 11.

Issue Memos

Mr. Jeff Mehlhaff and Mr. Lucas Martin, Fiscal Analysts, presented the *Regional Comparison of Post-Secondary Tuition & Fees Issue Memorandum* [\(Document #7\)](#). The issue memo examines tuition and fees for both two-year and four-year public educational institutions. South Dakota's technical institutes have the highest average resident tuition and fees in the region, and the state's public universities have the second highest average undergraduate resident tuition and fees in the region.

Mr. Jeff Mehlhaff, Fiscal Analyst, presented the *Cooperative Extension Service Issue Memorandum* [\(Document #8\)](#). Representative Mickelson said he requested this issue memo based on comments from those in the ag industry on how they do not use the extension services because of modern technology. Representative Mickelson said he has learned that the cooperative extension service (CES) provides so much more support than he had realized.

Mr. Mehlhaff said the four core programs of the CES focus on agriculture, food and families, community development, and 4-H/youth development. The federal funding for these programs continues to decrease, while state funding continues to increase.

Representative Lee Qualm requested additional information regarding the CES expenses including a breakdown of the departments and agricultural programs. Mr. Mehlhaff was asked to continue his research on this issue and report back at a future Executive Board meeting. Representative Qualm said he will work with Mr. Mehlhaff in collecting the additional data.

Ms. Emily Kerr, Legislative Attorney, presented the *Refugee Resettlement Issue Memorandum* [\(Document #9\)](#). The issue memo provides a summary of the history of refugee resettlement and a brief overview of the structure and administration of the program in the United States. South Dakota is one of twelve states that participate in the Wilson-Fish Program, where the federal government contracts with a nonprofit organization to administer the funds. In South Dakota, Lutheran Social Services is that nonprofit entity.

A MOTION WAS MADE BY SENATOR CURD, SECONDED BY REPRESENTATIVE STEVENS, TO APPROVE AND ADOPT THE REGIONAL COMPARISON OF POST-SECONDARY TUITION & FEES AND THE REFUGEE RESETTLEMENT ISSUE MEMOS. The motion prevailed on a voice vote.

A MOTION WAS MADE BY REPRESENTATIVE STEVENS, SECONDED BY SENATOR BOLIN, TO APPROVE AND ADOPT THE INITIATIVES AND REFERENDA ISSUE MEMO. The motion prevailed on a voice vote.

Budget Subcommittee Report

Senator Jeffrey Partridge, Chair, Budget Subcommittee, said the Executive Board is responsible for setting the LRC budget request. Senator Partridge gave a brief overview of the proposed FY19 LRC budget request and asked Ms. Mehlhaff to further explain the proposal. Ms. Annie Mehlhaff, Chief Fiscal Analyst, said the total increase in the Legislative Research Council's FY19 budget request over the FY18 budget is \$46,208, with the total request for FY19 being \$6,901,691.

A MOTION WAS MADE BY SENATOR PARTRIDGE, SECONDED BY REPRESENTATIVE GOSCH, TO APPROVE THE FY19 LRC BUDGET AS PRESENTED.

Representative Haugaard said interns are assigned to leadership and committees, and adding two interns to be assigned to the remaining legislators would help them be more efficient.

Senator Partridge said the Budget Subcommittee was not aware of this request and he opposes making this change to the proposed budget.

A MOTION WAS MADE BY REPRESENTATIVE HAUGAARD, SECONDED BY REPRESENTATIVE QUALM, TO AMEND THE MOTION BY ADDING \$11,000 TO THE PROPOSED BUDGET FOR TWO ADDITIONAL SESSION INTERNS. The motion failed on a voice vote.

The original motion to approve the budget was then acted on as follows:

A MOTION WAS MADE BY SENATOR PARTRIDGE, SECONDED BY REPRESENTATIVE GOSCH, TO APPROVE THE FY19 LRC BUDGET AS PRESENTED. The motion prevailed on a roll call vote with 15 voting AYE. Those voting AYE: Gosch, Haugaard, Qualm, Reed, Stevens, Tieszen, Bolin, Curd, Langer, Partridge, Stalzer, Sutton, Hawley, Greenfield, and Mickelson.

Senator Jeffrey Partridge said the Executive Board is responsible for setting the Department of Legislative Audit budget request. Senator Partridge asked the Auditor General to present this budget proposal.

Mr. Marty Guindon, Auditor General, said the total increase in the FY19 budget request over the FY18 budget is \$72,249, bringing the total budget request for the Department of Legislative Audit for FY19 to \$3,782,038.

Representative Tieszen said there is a need to look at the salary structure for Legislative Audit to find a way to assist the Auditor General in hiring staff. The office is currently short five staff members making it a challenge to meet the deadlines. Representative Tieszen said this is a critical office in state government and the service they provide should not be underestimated.

Representative Hawley asked about the salary adjustments that were made a few years ago. Auditor General Guindon said those adjustments were to mid-range salaries for staff, not starting salaries.

Representative Mickelson asked the Auditor General to come back to the November Executive Board meeting to further discuss this salary issue.

A MOTION WAS MADE BY SENATOR PARTRIDGE, SECONDED BY REPRESENTATIVE GOSCH, TO APPROVE THE FY19 DEPARTMENT OF LEGISLATIVE AUDIT BUDGET AS PRESENTED. The motion prevailed on a roll call vote with 14 voting AYE, and 1 EXCUSED. Those voting AYE: Gosch, Haugaard, Qualm, Reed, Stevens, Tieszen, Bolin, Langer, Partridge, Stalzer, Sutton, Hawley, Greenfield, and Mickelson. EXCUSED: Curd.

JCA Request for Lean Study

Mr. Tom Hart, Deputy Director, Department of Labor and Regulation (DLR), said the Joint Committee on Appropriations requested that the DLR conduct a Lean audit of one or more of the divisions. Mr. Hart said DLR has

appointed five people to move forward with the Lean program, and one individual will spend about 80% of his time implementing the Lean program. DLR has studied the three different levels of the Lean program and have drafted the scope of work for developing the RFP. Mr. Hart said the DLR is requesting funding from the Executive Board to move forward with the RFP.

Representative Hawley and Senator Partridge asked if DLR has an estimate of the cost of the Lean program. Mr. Hart said DLR is seeking authority from the Executive Board to move forward with the RFP process, but does not yet know what the cost will be.

Senator Partridge explained that the Joint Committee on Appropriations believes the Lean audit process will be beneficial to the DLR as the federal funding for the department continues to decrease.

A MOTION WAS MADE BY REPRESENTATIVE HAWLEY, SECONDED BY SENATOR PARTRIDGE, THAT THE BOARD DIRECT LRC TO DEVELOP AN RFP, IN COOPERATION WITH THE DEPARTMENT OF LABOR AND REGULATION, TO SOLICIT FOR LEAN CONSULTING SERVICES FOR THE DEPARTMENT, NOT TO EXCEED \$200,000, AND THAT LRC REPORT BACK TO THE BOARD AT ITS NOVEMBER MEETING WITH A RECOMMENDED VENDOR AND PROPOSED CONTRACT, FOR BOARD REVIEW AND APPROVAL, AND PROVIDE THE JOINT COMMITTEE ON APPROPRIATIONS WITH A PROGRESS REPORT AT ITS WEST RIVER TOUR IN OCTOBER. The motion prevailed on a roll call vote with 15 voting AYE. Those voting AYE: Gosch, Haugaard, Qualm, Reed, Stevens, Tieszen, Bolin, Curd, Langer, Partridge, Stalzer, Sutton, Hawley, Greenfield, and Mickelson.

Board of Regents FY19 Budget Request

Representative Mickelson said that after reading an article in the newspaper he requested to see the Board of Regents FY19 Budget Request.

Mr. Jeff Mehlhaff, Fiscal Analyst, presented the Board of Regents FY19 Budget Request ([Document #10](#)). Mr. Mehlhaff said this budget request was approved at the last Board of Regents meeting. They are requesting about \$6.5 million from the general fund, which does not include any funding for the South Dakota Opportunities Scholarships.

Initiative & Referendum Task Force Vice Chair Appointment

Representative Mickelson said former-Representative Don Hagggar was serving as the Initiative and Referendum Task Force Vice Chair when he submitted his resignation from the legislature, which means a new vice chair needs to be appointed. The Executive Committee appointed Senator Bolin as the acting vice chair until the full board could take action.

A MOTION WAS MADE BY SENATOR GREENFIELD, SECONDED BY SENATOR STALZER, TO APPOINT SENATOR JIM BOLIN AS THE VICE CHAIR OF THE INITIATIVE AND REFERENDUM TASK FORCE. The motion prevailed on a voice vote.

Other Business

Update on Mid Central Audit and the GOAC Review: **Auditor General Marty Guindon, and Senator Deb Peters, Chair of the Government Operations and Audit Committee (GOAC)**, met with the Executive Board to discuss the [Mid Central Educational Cooperative Audit Report](#) and GOAC's review of the audit.

Representative Stevens said most people are interested in what has been learned from this audit and if there are any statutory changes that might help prevent it from happening again.

Auditor General Guindon said this was management level fraud, which is more difficult to detect than employee level fraud. The legislative actions taken over the past two years that apply to audits will help deter this from happening again.

Senator Peters said South Dakota has a citizen legislature and the legislature hires the expertise to do this type of work for the state. Senator Peters said the legislature does not need to change anything statutorily to deal with these types of issues.

Legislative Travel Request: **Senator Brock Greenfield** read a request that Representative Elizabeth May sent to both him and Representative Mickelson. Representative May requests that legislators who are not members of the committee be reimbursed for their travel to any interim legislative meetings.

Senator Greenfield and Representative Mickelson agreed that this would apply only to travel expenses and not salary reimbursement; requests for travel reimbursement when attending an entire official legislative meeting can be submitted to LRC.

Adjourn

A MOTION WAS MADE BY REPRESENTATIVE STEVENS, SECONDED BY REPRESENTATIVE HAWLEY, THAT THE EXECUTIVE BOARD BE ADJOURNED. The motion prevailed on a voice vote.

The Board adjourned at 4:00 p.m.